

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ALISHA LEWANDOWSKI, individually
and on behalf of a minor child

Plaintiff,

v.

ERIE COUNTY, *et al.*,

Defendants.

17-CV-1167-LJV-JJM
DECISION & ORDER

On October 25, 2017, the *pro se* plaintiff, Alisha Lewandowski, commenced this action under 42 U.S.C. § 1983 in New York State Supreme Court, Erie County, on behalf of herself and her minor child. Docket Item 1 at 7. Lewandowski alleged that the defendants—Erie County, Erie County Department of Social Services (“DSS”), DSS Commissioner Al Dirschberger, and DSS Caseworker Amber Over¹—removed her child from her care in violation of various constitutional protections.² *Id.* at 7-8. In November 2017, the defendants removed this case to federal court under 28 U.S.C. §§ 1441(b) and 1446. Docket Item 1 at 1; Docket Item 2 at 1.

¹ The defendants have “dispute[d] whether the individual defendants were named in this action and served.” Docket Item 43 at 7. But because Judge McCarthy found that “even if the individual defendants were properly joined in this action, . . . [Lewandowski’s] claims against them fail on the merits,” *id.*, and because this Court adopts that finding here, it need not reach the issue.

² Specifically, Lewandowski alleged that the defendants violated the rights of herself and her child “under the [F]ourth [A]mendment, the [F]ifth Amendment[,] and the [D]ue [P]rocess [C]ause of the [F]ourteenth Amendment.” Docket Item 1 at 8. She also alleged violations of “Habeas Corpus.” *Id.*

On February 13, 2018, this Court referred the case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 3. On November 13, 2018, the defendants moved for summary judgment. Docket Item 14. Lewandowski never filed a response to that motion.³ Docket Item 43 at 1 (noting that the defendants' motion for summary judgment is "unopposed"). Nevertheless, on August 21, 2019, Judge McCarthy stayed all proceedings in this case pending the conclusion of Lewandowski's case in New York State Family Court. Docket Item 24.

On July 31, 2023, after the Family Court proceedings had concluded, Judge McCarthy lifted the stay and set a briefing schedule for the defendants to "supplement their motion" and for Lewandowski to "respon[d] to that supplementation." Docket Item 41. The defendants filed an affirmation in support of their earlier motion, Docket Item 42, but Lewandowski again failed to respond, Docket Item 43 at 2.

On September 18, 2023, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the defendants' motion should be granted. Docket Item 43. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636

³ Lewandowski did respond to Judge McCarthy's order to show cause as to why "th[e] court should not abstain from exercising jurisdiction and remand the action to state court." See Docket Item 18 at 2; Docket Item 20.

nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the filings in connection with that motion. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the defendants' motion.

For the reasons stated above and in the R&R, the defendants' motion for summary judgment, Docket Item 14, is GRANTED. The Clerk of the Court shall close the case.

SO ORDERED.

Dated: November 15, 2023
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE